IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

RP.No. 763 of 2002(D)

AGAINST THE JUDGEMENT/ORDER IN CRP.929/2002 Dated 07/06/2002
OS 756/97 OF PRL.M.C.KOZHIKODE-I,
IA 4481/2000

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REVIEW PETITIONER/RESPONDENT IN C.R.P.

KANDIYIL UMMERKOYA, 56 YEARS,
S/O. IBRAHIM HAJI, KALATHINKUNNU AMSOM DESO,
KOZHIKODE TALUK.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS: PETITIONER IN C.R.P.

CHEKRAYAN VALAPPIL HAMEED,
48 YEARS, S/O. KHADER, KALATHINKUNNU
AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.SALIL NARAYANAN.K.A.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD
ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON C.M.P.NO.5533/02 IN RP 763/02

DISMISSED

3/1/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.P.NO.763 OF 2002

Dated 3rd January 2007

O R D E R

Petitioner is plaintiff in O.S.756/97 on the file of Principal Munsiff court, Kozhikode. Respondent is the defendant. Suit was filed for recovery of possession and injunction. Recovery of possession was sought for in respect of plaint B schedule property and decree for injunction was sought for in respect of plaint C schedule property. Plaint B and C schedule properties are said to be portion of plaint A schedule property. Petitioner filed I.A.4481/2000 under Order VI Rule 17 of Code of Civil Procedure for amendment of the plaint. Learned Munsiff dismissed the application which is challenged in this revision petition filed under Section 115 of the Code.

2. Learned counsel appearing for petitioner and respondent were heard.

3. Learned Munsiff dismissed the application on the ground that suit was filed in 1997 and amendment application was based on a report submitted by the

Commissioner in another suit and it is highly belated and cannot be allowed. Learned counsel appearing for petitioner pointed out that in view of the alienation of plaint C schedule property, plaintiff wanted to delete plaint C schedule property from the suit properties and that is one of the amendment sought for and there cannot be any objection for the said amendment. It was pointed out that extent of plaint B schedule property was found to be not correct and petitioner could realise the mistake only on getting a copy of the report submitted by the Commissioner in O.S.181/94 and by the amendment neither the character nor the nature of the suit will be changed and even if respondent has a case that claim is barred by adverse possession that could be raised in the suit and while considering amendment application that question need not be considered. Learned counsel appearing for respondent vehemently argued that in O.S.181/94 respondent was not a party at all and that report is not binding on him and on that basis amendment application is not maintainable. It was also argued that if plaint is allowed to be amended, petitioner would loss the plea of limitation available to him.

4. Considering the fact by amendment plaint C

schedule property, over which decree for injunction was sought is being excluded, there is no necessity for any objection on the part of the respondent. So long as petitioner does not want a decree for injunction in respect of plaint C schedule property, question whether alienation made by petitioner is correct or not is not at all relevant. Case of respondent is that if plaint B schedule property is amended by adding some more extent, plea of adverse possession would be lost and therefore it cannot be allowed. Respondent is entitled to file an additional written statement setting up all available contentions, including the plea based on adverse possession. The the fact that petition for amendment was allowed, will not effect the right of respondent to set up the plea of adverse possession.

5. Petition is allowed. I.A.4481/2000 stands allowed and petitioner is permitted to amend the plaint as sought for. Respondent is entitled to file additional written statement taking up all the defence available to him including the plea of adverse possession.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

ORDER

R.P.No.763 OF 2002

3rd January 2007

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